

1990

E.D. Shelledy v. Edward Lore, Alan Parsons, Erin Parsons, Roy Hockin, Harry Decker, Kent C. Bangerter, Lloyd V. McBride, David C. Kunz, Susan S. Kunz, individual, Merit Distributing Inc., a Utah corporation, State Tax Commission of the State of Utah, Salt Lake County, and John Does I-X :  
Unknown

Utah Supreme Court

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Eric P. Hartman; Attorney for Plaintiff

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FEB 23 1990

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Attorney for Plaintiff  
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Salt Lake City, UT 84106  
(801) 486-3751

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

---

E. D. SHELLEDY,	)	
	)	
Plaintiff,	)	DOCKETING STATEMENT
	)	(Subject to Assignment
vs.	)	to the Court of Appeals)
	)	
EDWARD LORE, ALAN PARSONS,	)	
ERIN PARSONS, ROY HOCKIN,	)	
HARRY DECKERED, KENT C.	)	
BANGERTER, LLOYD V. McBRIDE,	)	
DAVID C. KUNZ, SUSAN S. KUNZ,	)	
individual, MERIT DISTRIBUTING	)	Civil No. 890901388 PR
INC., a Utah corporation,	)	
STATE TAX COMMISSION OF THE	)	
STATE OF UTAH, SALT LAKE	)	Judge James S. Sawaya
COUNTY, and JOHN DOES I-X,	)	
	)	
Defendants.	)	

900074

Pursuant to Rule 9, Rules of the Utah Supreme Court, plaintiff-appellant E. D. Shelledy, through his counsel, Eric P. Hartman, submits the following docketing statement.

1. Jurisdiction of the Court is pursuant to Rules 3 and 4, Rules of the Utah Supreme Court, and Section 78-2-2, Utah Code Annotated.

2. This is an appeal from a final order of the Third Judicial District Court. It is believed the Order resolves all the issues between all the parties, but the trial court alternatively certified it for appeal under Rule 54(b), Utah Rules of Civil Procedure.

3. The Order sought to be reviewed was signed and entered on January 17, 1990, and the Notice of Appeal was filed on February 9, 1990. Copies are attached hereto.

4. STATEMENT OF FACTS: The case involves a dispute over title to a piece of real estate in Salt Lake County. Prior to January 14, 1981, the Small Business Administration (hereinafter SBA) held a lien interest in the subject property and Salt Lake County held an ad valorem tax lien against the property. On January 14, 1981, the SBA became record titleholders to the property by quit-claim deed from the prior owners, the Pearsons. Salt Lake County continued to assess taxes on the property and in May, 1984, purported to convey the property by final May sale tax deed to Edward Lore, who then quit-claimed his interest, if any, to various other named defendants. On December 28, 1988, the SBA purported to convey the property by quit-claim deed to the plaintiff, E. D. Shelledy. Shelledy then brought this action to quiet title to the property in himself and to determine what the tax obligation on the property was, if any. On cross-motions for summary judgment, the trial court ruled in Salt Lake County's favor and against plaintiff on all issues.

5. ISSUES PRESENTED: Plaintiff E. D. Shelledy believes the trial court erred in failing to grant his Motion for Summary Judgment and in granting that of Salt Lake County. The following issues are presented:

(a) The question of the validity of the 1984 tax deed. Shelledy contends it was void for lack of jurisdiction. Salt Lake County contends it is valid.

(b) Whether the county may assess taxes on the property once the SBA became record title holders.

(c) Whether the special statutes of limitations on tax deeds apply to bar plaintiff's claim to the property.

(d) Whether plaintiff lacks standing to question the validity of the 1984 tax deed.

6. Assignability Considerations: Appellant believes the Supreme Court should decide this case because it involves constitutional issues and issues of first impression in this state. Constitutional issues are questions of the immunity of the federal government from local taxation and standing to raise that immunity. An issue of first impression is whether special statutes of limitation favoring tax deeds can validate a deed that appellant argues was void for lack of jurisdiction.

7. Citations to Controlling Law:

Issue of validity of the 1984 tax deed:

United States v. Alabama, 313 U.S. 274 (1940) (the 1984 tax deed was void).

28 U.S.C., §2410

Issue of taxation of the property while owned by the SBA:

McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819)  
United States v. Schwartz, 278 F.Supp. 328 (S.D. N.Y. 1968)  
United States v. City of Roanoke, 258 F.Supp. 415 (W.D. Va. 1966)  
Utah Code Annotated Section 59-2-1101(1)(a)

Issue of limitations applicability:

Hansen v. Morris, 3 Utah2d 310, 283 P.2d 884 (1955)  
(dicta implies a deed which is void for lack of  
jurisdiction is outside scope of limitations statutes)

Oaksmith v. Johnston, 92 U.S. 343, 23 L.Ed. 682 (1875)  
(for the proposition that limitations do not run while  
title in U.S.)

8. There are no related or prior appeals in the case.

DATED February 22, 1990.

  
ERIC P. HARTMAN

MAILING CERTIFICATE

I certify that on February 22, 1990, I mailed, U. S. mail,  
postage prepaid, a copy of the foregoing to:

Edward Lore, defendant  
440 North 800 East  
Kaysville, UT 84037

Mary Ellen Sloan  
Salt Lake County Attorney's Office  
2001 South State Street, #S3600  
Salt Lake City, UT 84190-1200

Robert C. Liljenquist  
DAY & BARNEY  
Attorney for defendants, Alan Parsons,  
Erin Parsons, Roy Hockin, Lloyd V. McBride,  
David C. Kunz, and Merit Distributing, Inc.  
45 East Vine Street  
Murray, UT 84107

  
ERIC P. HARTMAN

WP:Shelledy.Docket

FILED  
DISTRICT COURT

JAN 17 12 17 PM '90

THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY  
BY *[Signature]*  
DEPUTY CLERK

ERIC P. HARTMAN, No. 1400  
Attorney for Plaintiff  
2120 South 1300 East, Suite 301  
Salt Lake City, UT 84106  
(801) 486-3751

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IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

---

E. D. SHELEDY,	)	
	)	
Plaintiff,	)	O R D E R
	)	
vs.	)	
	)	
EDWARD LORE, ALAN PARSONS,	)	
ERIN PARSONS, ROY HOCKIN,	)	
HARRY DECKERED, KENT C.	)	
BANGERTER, LLOYD V. McBRIDE,	)	
DAVID C. KUNZ, SUSAN S. KUNZ,	)	
individual, MERIT DISTRIBUTING	)	Civil No. 890901388 PR
INC., a Utah corporation,	)	
STATE TAX COMMISSION OF THE	)	
STATE OF UTAH, SALT LAKE	)	Judge James Sawaya
COUNTY, and JOHN DOES I-X,	)	
	)	
Defendants.	)	

---

Plaintiff E. D. Shelledy's and defendant Salt Lake County's Cross-Motions for Summary Judgment came on regularly for hearing on December 18, 1989, in the Third Judicial District Court in and for Salt Lake County, the Honorable James S. Sawaya presiding. Plaintiff was represented by his counsel, Eric P. Hartman. Salt Lake County was represented by Deputy County Attorney Mary Ellen Sloan. Counsel for various other defendants, Robert Liljenquist, was present but did not argue.

The court, following argument and being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Salt Lake County's Motion for Summary Judgment is granted on all issues on the bases and for the reasons stated in its memoranda; and plaintiff's Motion for Summary Judgment is denied on all issues.

2. Salt Lake County's May 1984 tax sale was valid and title to the property in dispute is quieted in the tax sale purchaser or his successors in interest.

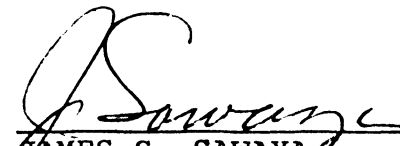
3. The property was subject to taxation by Salt Lake County during all times relevant herein.

4. Plaintiff is entitled to a statutory lien against the property for any tax payments made on the property.


5. The court's ruling resolves all issues between all parties herein, or alternatively, the court, finding no just reason for delay, directs entry of judgment on the above claims and certifies this Order as final for purposes of appeal pursuant to Rule 54(b) of the Utah Rules of Civil Procedure.

DATED January 17, 1990.

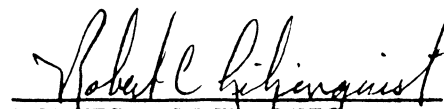
BY THE COURT:

  
JAMES S. SAWAYA  
Third District Judge

APPROVED AS TO FORM:

  
MARY ELLEN SLOAN  
Deputy County Attorney

APPROVED AS TO FORM:

  
ROBERT LILJENQUIST  
Attorney at Law

MAILING CERTIFICATE

I certify that on January \_\_\_\_, 1990, I mailed a copy of the foregoing Order, U. S. mail, postage prepaid to the following:

Edward Lore, defendant  
440 North 800 East  
Kaysville, UT 84037

Mary Ellen Sloan  
Salt Lake County Attorney's Office  
2001 South State Street, #S3600  
Salt Lake City, UT 84190-1200

Robert C. Liljenquist  
DAY & BARNEY  
Attorney for defendants, Alan Parsons,  
Erin Parsons, Roy Hockin, Lloyd V. McBride,  
David C. Kunz, and Merit Distributing, Inc.  
45 East Vine Street  
Murray, UT 84107

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WP:Shelledy.Order



ERIC P. HARTMAN, No. 1400  
Attorney for Plaintiff  
2120 South 1300 East, Suite 301  
Salt Lake City, UT 84106  
(801) 486-3751

FILED  
DISTRICT COURT

FEB 2 1990

*L. Dean Parker*

IN THE DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH

E. D. SHELLEDY,	)	
	)	
Plaintiff,	)	NOTICE OF APPEAL
	)	
vs.	)	
	)	
EDWARD LORE, ALAN PARSONS,	)	
ERIN PARSONS, ROY HOCKIN,	)	
HARRY DECKERED, KENT C.	)	
BANGERTER, LLOYD V. McBRIDE,	)	
DAVID C. KUNZ, SUSAN S. KUNZ,	)	
individual, MERIT DISTRIBUTING	)	Civil No. 890901388 PR
INC., a Utah corporation,	)	
STATE TAX COMMISSION OF THE	)	
STATE OF UTAH, SALT LAKE	)	Judge James S. Sawaya
COUNTY, and JOHN DOES I-X,	)	
	)	
Defendants.	)	

Plaintiff/Appellant, E. D. Shelledy, through his attorney Eric P. Hartman, pursuant to Rule 3(d), Rules of the Utah Supreme Court, gives notice of appeal as follows:

1. Plaintiff E. D. Shelledy is the party taking this appeal.

2. The appeal is from the Order of January 17, 1990, in its entirety.

3. The appeal is taken from the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable James S. Sawaya, presiding.

4. The appeal is taken to the Supreme Court of the State of Utah.

DATED January 18, 1990.

  
ERIC P. HARTMAN  
Attorney for Plaintiff/Appellant

MAILING CERTIFICATE

I certify that on ~~January~~ February 9, 1990, I mailed a copy of the foregoing, U. S. mail, postage prepaid, to the following:

Edward Lore, defendant  
440 North 800 East  
Kaysville, UT 84037

Mary Ellen Sloan  
Salt Lake County Attorney's Office  
2001 South State Street, #S3600  
Salt Lake City, UT 84190-1200

Robert C. Liljenquist  
DAY & BARNEY  
Attorney for defendants, Alan Parsons,  
Erin Parsons, Roy Hockin, Lloyd V. McBride,  
David C. Kunz, and Merit Distributing, Inc.  
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Murray, UT 84107

